

FACT SHEET

FEBRUARY 1998

Public Participation Under NEPA

Introduction

Public participation is an open, ongoing, two-way communication, both formal and informal, between GSA and community members. Because most GSA actions requiring analysis under the National Environmental Policy Act (NEPA) either directly or indirectly impact the surrounding community, an understanding of the public participation requirements of NEPA is essential. The Council on Environmental Quality's (CEQ's) regulations for implementing NEPA recognize the importance of meaningful public involvement in the NEPA process. More than 20 sections of the CEQ regulations reference public participation. This fact sheet provides an explanation of the requirements for public participation under NEPA and other laws, the importance of public participation, and some methods on how to effectively provide information to and solicit input from the public.

Why is Public Participation Important?

Title 40 Code of Federal Regulations (CFR) Part 1500.1(b) states, "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken...Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." CEQ regulations specifically require public involvement in the scoping process and public notification of the availability of NEPA documents. In many cases, NEPA documents must be made available to the public for a specified length of time before moving on to the next step in the process. CEQ regulations establish basic procedures that agencies must follow. GSA and other Federal agencies are mandated by 40 CFR Part 1501.7(a)(1) to "invite the participation of affected Federal, State and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds)." Public participation is especially well established for Environmental Impact Statements (EISs) because of the clear public

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involvement procedures outlined in the regulations. Although it is clear that agencies must provide for public participation, the regulations leave public participation requirements for categorical exclusions (CATEXs) and environmental assessments (EAs) to the discretion of the agencies. The PBS NEPA Desk Guide encourages public involvement during scoping; analysis of alternatives, affected environment, and potential impacts; and review of NEPA documents (EAs and EISs).

Besides being a legal requirement, public participation allows both GSA and the affected public to learn about and better understand each other's views. The ultimate result of public participation should be better, more informed decisions. If GSA involves the public in the decision making process by actively seeking and incorporating their views, it will ultimately make more informed decisions. Furthermore, members of the public are much more likely to accept a GSA decision if they are satisfied that their concerns were listened to and addressed, regardless of whether they agree with the decision. Other benefits of public participation include:

- Enhanced credibility for GSA
- Enhanced mutual understanding between GSA and the community
- Identification of environmental impacts/issues

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- Increased community support
- Reduced delays
- Promotions of environmental justice

Levels of Public Involvement

NEPA regulations describe broad goals and specific requirements for public participation. The level and kind of public involvement will likely be different for each GSA action, and will be dependent upon the action itself and its potential environmental issues. Although the CEQ regulations contain specific public participation requirements for EISs, such as during scoping and review of draft EISs, the public can be involved in any or all stages of the NEPA process (see Table 1).

CATEX

Public participation can help GSA determine whether there are exceptional circumstances associated with a CATEX action that would warrant a higher level of analysis such as an EA or EIS. Although there are no public participation requirements in the CEQ regulations for CATEXs, the PBS NEPA Desk Guide requires internal and possibly external scoping, if needed. The Desk Guide also states that interested parties should be kept informed of CATEX actions.

EAs

The CEQ regulations require Federal agencies to involve the public in the preparation of EAs and findings of no significant impact (FONSI), and give public notice of their availability. The method of public notification is left to the discretion of the agency. The PBS NEPA Desk Guide states that public involvement for EAs should be provided at least during scoping and after preparing a FONSI.

EISs

Public participation requirements for EISs are well established in the CEQ regulations. The public must be included in scoping and review of draft, final, and supplemental EISs. The regulations require Federal agencies to publish a notice of intent (NOI) to prepare an EIS in the Federal Register (FR). Federal agencies are also required to publish a notice of availability (NOA) for draft, final, and supplemental EISs.

After preparing a draft EIS, Federal agencies are required to request comments on the draft from the public; Federal, State, and local governments; Indian Tribes; and any other interested parties. The regulations also require agencies to conduct public hearings or public meetings whenever appropriate. Final and supplemental EISs must be filed with the CEQ, EPA, and other interested parties.

GSA should determine the appropriate level and kind of public participation during the EIS scoping process. To determine the appropriate level of public involvement, the PBS NEPA Desk Guide recommends asking the following questions:

- Are there special requirements such as engineering, legal, or public health standards associated with the action?
- Do you have enough information to make the correct decision?
- Are there many potentially feasible alternatives?
- Is public acceptance critical to carrying out the action?
- Is public acceptance reasonably certain?
- Do GSA representatives and the public have shared goals concerning the action?
- Is conflict likely?

By considering the above questions, GSA can better decide on the level of public involvement the action will likely need. GSA may decide to make the decision without public involvement, by considering the public's input, in consultation with the public, or somewhere in between. When the level of public involvement has been determined, GSA should then design a public involvement strategy.

Notice, Public Relations, and Public Participation

It is important not to confuse public notice with public participation. Providing notice is an important way to let the public know that something is planned. It is required at various points in the NEPA process and by other laws. However, it does not by itself guarantee effective public participation. Good public par-

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Table 1
NEPA and GSA Public Involvement Requirements

ACTION	PUBLIC PARTICIPATION REQUIREMENTS	NOTIFICATION REQUIREMENTS	TIME REQUIREMENTS	CITATIONS
Determination that an action is Categorically Excluded from NEPA requirements	Requires internal scoping and consultation with environmental experts and agencies with jurisdiction by law or expertise, as needed.	Generally requires no public participation, but interested parties should be kept informed.	The determination of whether an action is categorically excluded should occur early in the planning process. There are no time requirements for public notification.	PBS NEPA Desk Guide, Interim Guidance, September 1997, Sections 5.7, 5.8
Preparation of Environmental Assessment (EA)	Agencies are required to involve other environmental agencies, applicants, and the public in preparing EAs. During scoping and preparation of EAs where appropriate.	Public notification is required but the method is at the discretion of the agency. Methods could include notices in Federal Register, national publications, mailings, and local newspapers.	No time requirement for public notification.	40 CFR 1501.4(b) 40 CFR 1506.6(b) PBS NEPA Desk Guide, Interim Guidance, September 1997, Section 6.6.2 CEQ's "Forty Most Frequently Asked Questions Concerning CEQ's NEPA Regulations"
Finding of No Significant Impact (FONSI)	Agencies are required to involve other environmental agencies, applicants, and the public, whenever appropriate, in preparing FONSI.	Public notification is required but the method is at the discretion of the agency. Methods could include notices in Federal Register, national publications, mailings, and local newspapers.	30-day public review period if the proposal is a borderline case, is a precedent setting case, is similar to one which normally requires an EIS, is in a floodplain or wetland, or if scientific or public controversy exists.	40 CFR 1506.6 40 CFR 1501.4(e)(2) EO 11988, Sec. 2(a)(4) CEQ's "Forty Most Frequently Asked Questions Concerning CEQ's NEPA Regulations" PBS NEPA Desk Guide, Interim Guidance, September 1997, Section 6.10.3
Notice of Intent (NOI) to prepare an EIS	Inform public of the agency's intent to prepare and EIS.	Publish in Federal Register.	GSA accepts comments on the scope of a forthcoming EIS; usually no shorter than 30 days, often 45 or 90, depending on the project scope.	40 CFR 1507.3(e) 40 CFR 1501.8 PBS NEPA Desk Guide, Interim Guidance, September 1997, Appendix 2

Table 1 - Continued

ACTION	PUBLIC PARTICIPATION REQUIREMENTS	NOTIFICATION REQUIREMENTS	TIME REQUIREMENTS	CITATIONS
Preparation of Draft Environmental Impact Statement (DEIS)	The public must be involved in scoping and formal review of any DEIS. Request comments from the public, state and local governments, and Indian Tribes. Hold public hearings or public meetings whenever appropriate.	Publish Notice of Availability (NOA) in Federal Register, national and local publications.	45-day public notice/ commenting period after publication of the NOA. This may be extended as necessary.	PBS NEPA Desk Guide, Interim Guidance, September 1997, Section 7.10, Appendix 2 40 CFR 1501.8 40 CFR 1506.6 40 CFR 1506.10 40 CFR 1503.1
Preparation of Final Environmental Impact Statement (FEIS)	Provide an opportunity for the public to review the FEIS. Incorporate comments on DEIS.	NOA must be published for D.C.S. File with CEQ, EPA, and other interested parties.	30-day review period after publication of the NOA.	40 CFR 1506.9 40 CFR 1506.10 40 CFR 1503.4 PBS NEPA Desk Guide, Interim Guidance, September 1997, Section 7.14.4
Preparation of Supplemental Environmental Impact Statement (SEIS)	Same requirements as DEIS and FEIS (except scoping).	Same requirements as DEIS and FEIS (except scoping).	Same requirements as DEIS and FEIS.	40 CFR 1502.9(c)(4) PBS NEPA Desk Guide, Interim Guidance, September 1997, Section 8.4
Preparation of Record of Decision (ROD)	Inform the public of the decision.	Made available to public in same way as DEIS and FEIS.	No public comment period necessary.	PBS NEPA Desk Guide, Interim Guidance, September 1997, Section 7.15.3 CEQ's "Forty Most Frequently Asked Questions Concerning CEQ's NEPA Regulations"

Notice, Public Relations, and Public Participation
Continued from Page 2

Participation demands that GSA make an effort to identify potentially concerned groups and contact them, and otherwise reach out to involve interested members of the public.

Public participation also should not be confused with public relations, or with the provision of public information. Public information is provided to inform, public relations helps GSA get along with the public, but public participation is an active dialogue in which

the interested public participates substantively in GSA's planning and decisionmaking.

Providing for Public Participation

Effective public participation cannot be achieved without proper planning and preparation. GSA should seek to understand the human and political considerations of the affected community so that they may balance this with technical information. One way to

do this is to determine the profile of the affected community. GSA can either develop a community profile in-house or hire a contractor for the task. The community profile provides information about the community, how is it likely to respond to the proposal, and if there are other environmental issues impacting the community. The community profile can then be used to create a public involvement plan, which outlines the level and kind of public participation GSA seeks to achieve. For example, GSA may elect to hold public meetings or a series of open houses, followed by a planning workshop designed to involve community leaders in working toward solutions. In any case, GSA must first identify the stakeholders, make information available to them in a favorable location and in a way they can understand, and effectively communicate the issues.

Identifying Stakeholders

GSA must understand the people and the communities that are affected by their proposal. Stakeholders are those individuals and organizations with an economic, cultural, social, or environmental "stake" in the action. GSA can identify stakeholders through the community profile, or by holding public meetings. GSA should inform state, local, and tribal governments; Federal agencies with jurisdiction by law or expertise; civic and environmental organizations; interested or affected private citizens; and communications media of the proposal and the NEPA process to be conducted. Take care to ensure that all stakeholders have been identified including low-income and minority populations. Community and school newspapers, radio and television announcements, and notices in public places can help ensure that everyone who has an interest in the proposal has an opportunity to participate.

How to make information available

Information about the proposal should be provided to stakeholders in an understandable form. If the information is provided in the form of published information, a simple direct style of writing should be used. However, simply providing published information may not be sufficient to provide information to all stakeholders. GSA can provide information via direct mailing, display advertisements, inserts in the local newspaper, information hotlines, or mall exhibits. GSA can also provide information at open houses, civic meetings, public meetings, and workshops. Exhibits are often very informative, as they provide graphic information that can be used to simply display information about the proposal. The use of maps, charts, diagrams, photographs, videotapes,

computer displays, and models can provide much more usable information than pages and pages of text. GSA should provide information using various means to ensure that all stakeholders have an opportunity to understand, and therefore, effectively participate in the NEPA process. Take care to design public participation strategies to avoid conflicts with cultural events or beliefs.

GSA should also be sensitive to minority populations and low-income populations and ensure their participation by making information available to them in ways they can readily understand. For example, GSA can provide translation for non-English speaking stakeholders. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," recommends agencies like GSA identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." For more information, please see the NEPA Call-In fact sheet "Environmental Justice," available from NEPA Call-In at (202) 208-6228.

By using appropriate means of communication, GSA can:

- better identify stakeholders during scoping;
- provide for better analysis of alternatives, the affected environment, and potential impacts; and
- achieve effective review of environmental documents.

In public participation, the goal is to ensure that all stakeholders are identified, provided with useful information, and invited to participate in the NEPA process.

Logistics

When providing information to stakeholders consider the location, size, room layout, temperature, comfort, and safety of the facility to be used. Provide access for the physically disabled and sign language interpretation for the hearing impaired as required by the American's With Disabilities Act. Consider utilizing community centers, schools, and libraries, as these facilities are often convenient for the stakeholders. Also ensure that locations are accessible to low-income and minority groups, and consider child care and public transportation where appropriate. Evening meetings are usually better than during the

day and should avoid conflicting with other community or cultural events.

Communication Techniques

Information should be provided to stakeholders in ways that encourage discussion and mutual understanding. Provide information in a clear, simple, and straightforward manner using non-technical language. Using technical material and language that stakeholders find difficult to understand will block or slow public participation. In fact, as demonstrated by *Oregon Environmental Council v. Kunzman 1985*, and *Sierra Club v. Froehlke 1973*, citizens and special interest groups have successfully brought suit against agencies for producing EIS documents that are difficult to understand.

The use of photosimulation and simple editing techniques have been shown to increase stakeholder understanding of EISs according to a study published in *Environmental Impact Assessment Review*. Photosimulation can be used to demonstrate environmental changes by showing before and after pictures of the proposal. This technique can be very useful when substantial visual changes will occur as a result of the project. Simple editing techniques, such as providing an overview of each section, and using headings and bullets can greatly enhance the readability of the document.

When meeting with stakeholders, GSA can provide facilitators, mediators, and translators to encourage free-flowing conversation. Be aware of local speech and dress. Stakeholders may feel more at ease if GSA representatives attend meetings in casual dress instead of more formal suits. As stated above, meetings should be accessible to low-income and minority groups, and accommodate cultural traditions. For example, arrangements should be made for Native American groups who have concerns that cannot be shared publicly (information on sacred sites).

Risk Communication

Communicating risk to the public should serve to educate and involve them in decisions that affect their lives. Obviously, the public is very interested in the risks associated with any proposal that affects their community. GSA should provide information about risks to stakeholders as soon as it is available. Openly discuss risks to determine the stakeholder's views and knowledge about the subject as well as what they would like done about the risks. Provide information about actions that are already underway, and what GSA can and cannot do in the future. Remember

the "Seven Cardinal Rules of Risk Communication" developed by the Environmental Protection Agency (EPA):

- Accept and involve the public as a legitimate partner;
- Plan carefully and evaluate your efforts;
- Listen to the public's specific concerns;
- Be honest, frank, and open;
- Coordinate and collaborate with other credible sources;
- Meet the needs of the media; and
- Speak clearly and with compassion.

Responding to Comments on Environmental Documents

Title 40 CFR 1503.1 requires Federal agencies to make DEISs available to the public for comment, and Title 40 CFR 1503.4 requires Federal agencies to respond to these comments in the final EIS. According to the regulation, possible responses to the comments are to:

- Modify alternatives;
- Develop and evaluate alternatives not previously considered;
- Supplement, improve, or modify analysis;
- Make factual corrections; and
- Explain why the comment does not warrant further response.

Responses to comments should be substantive and thoughtful, not dismissive and not defensive. It may well be that a comment will require new research, new analysis, and possibly consideration (and even adoption) of a new alternative. Comments may even lead to abandonment of the proposed action, in which case no final EIS is prepared.

The regulations require that all substantive comments (or summaries) be attached to the final EIS. Agencies are also required to attach substantive comments

that did not merit individual discussion in the text. Agencies may write minor factual changes resulting from public comments on errata sheets and attach them to the final EIS. All other changes should be incorporated into the final EIS, which is then made available to the public for review.

Public Participation Outside of NEPA

In addition to NEPA, there are other laws and executive orders (EOs) that contain public participation requirements. These include the National Historic Preservation Act (NHPA); the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the Resource Conservation and Recovery Act (RCRA); the Native American Graves Repatriation Act (NAGPRA); and EO 11988, "Floodplain Management," to name a few.

Section 106 of the NHPA requires Federal agencies to consult with interested parties in the identification of historic properties, and in the determination and resolution of effects. CERCLA requires the EPA to provide information to residents living near Superfund sites and involve them in cleanup decisions. RCRA requires facilities that are seeking permits to treat, store, or dispose of hazardous waste to involve the public. NAGPRA requires consultation with Indian Tribes or other Native Americans prior to excavation or removal of certain cultural items. Finally, EO 11988 requires public review of all plans or proposals involving floodplains.






NEPA public participation procedures may be applied to other laws, regulations, and EOs; however, some require specific consultation procedures that are not required by NEPA. Each law, implementing regulation, and EO should be reviewed to ensure proper and effective public participation procedures are followed.




Dos and Don'ts for Effective Communication

Do	Don't
Be positive in your attitude.	Don't "fudge" information.
Be an active listener.	Don't argue with the public.
Avoid acronyms.	Don't be defensive.
Avoid Jargon.	Don't assume that those most concerned will be the nearest neighbors to the facility.
Carefully choose your words.	Don't compare this site with other sites.
Expect the public to be concerned.	Don't point fingers.
Keep things in perspective.	
Show empathy -- not sympathy.	

How NOT to Provide for Public Participation

In the past, a common model of "public participation" employed by agencies involved:

-  Publishing notice of a meeting;
-  Renting a local public space like a high school gym;
-  Having agency officials and consultants explain the project in detail;
-  Providing an opportunity for public officials to express their views;
-  Letting project proponents speak;

-  Letting others speak;
-  Making a record of what was said; and
-  Adjourning the meeting.

This has been referred to as the "Three-I" model, for "Inform, seek Input, and Ignore." Even where it was honestly intended to elicit public input for full consideration, it was usually not effective, and often left the public feeling highly antagonistic toward the project.

There are many better ways to involve the public. Whatever you do, avoid the Three-I model!

References

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